

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the office electronic filing system in accordance with § 1.6(a)(4), on the date shown below.

Dated: February 23, 2010

Electronic Signature for Danielle L. Herritt:

/Danielle L. Herritt/

Docket No.: 117825-05101  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:

Sugasawa *et al.*

Application No.: 10/500,964

Confirmation No.: 3433

Filed: July 8, 2004

Art Unit: 1625

For: 2-ACYLAMINOTHIAZOLE DERIVATIVE OR  
SALT THEREOF

Examiner: Celia C. CHANG

MS Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**STATEMENT UNDER 37 C.F.R. § 1.705(b)(2)**

Dear Sirs:

1. This statement is respectfully submitted in support of the “Request for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. § 1.705(d)” being filed herewith for the above-referenced patent application. In view of the following, it is respectfully requested that Applicant be granted a Patent Term Adjustment of 842 days.

2. Pursuant to 37 C.F.R. § 1.705(b)(2)(i), Applicant respectfully submits that the correct period of Patent Term Adjustment is 842 days which includes A-delays, B-delays, reductions due to Applicant’s delays, and exclusions due to the filing of a Request for Continued Examination. First, pursuant to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), Applicant is entitled to an adjustment of 570 days due to the U.S. Patent and Trademark Office’s (USPTO) failure to mail a notification or Notice of Allowance prior to 14 months after the date on which the Applicant fulfilled the requirements of 35 U.S.C. § 371 (A-delays). Pursuant to 37 C.F.R. § 1.704(a), the A-delays are reduced by 168 days due to Applicant’s delays. Pursuant to 37 C.F.R.

§§ 1.702(b) and 1.703(b), Applicant is also entitled to an adjustment of 895 days due to the USPTO's failure to issue a patent within 3 years of the date on which the application proceedings commenced under 35 U.S.C. § 371 (B-delays). Pursuant to 37 C.F.R. § 1.703(b)(1), the B-delays are reduced by 455 days due to Applicant's filing of a Request for Continued Examination. Accordingly, pursuant to 37 C.F.R. § 1.705(d), Applicant is entitled to a Patent Term Adjustment of 842 days, which is equivalent to the sum of the USPTO's A-delays minus Applicant's reductions plus the USPTO's B-delays minus Applicant's exclusions.

3. The relevant dates, pursuant to 37 C.F.R. § 1.705(b)(2)(ii), and the adjustment that the patent will be entitled to, pursuant to 37 C.F.R. § 1.703(f), are set forth as follows:

**A-Delays: USPTO Examination Delays Pursuant to 37 C.F.R. § 1.702(a) and § 1.703(a)**

In the instant application, Applicant notes that the Issue Notification allotted 570 days of USPTO A-delays. Applicant does not dispute the USPTO's A-delays calculations.

**Reduction of Patent Term Adjustment Pursuant to 37 C.F.R. § 1.704(a)**

Applicant notes that the Issue Notification attributed 168 days of reduction to the Applicant. Applicant does not dispute this reduction.

**B-Delays: USPTO Three-Years Delay Pursuant to 37 C.F.R. § 1.702(b) and § 1.703(b)**

In the instant case, the Patent Term Adjustment listed in the Issue Notification allotted 0 days of B-delays. However, Applicant believes that this Patent Term Adjustment has been made in error. Applicant respectfully notes that the 35 U.S.C. § 371 proceedings commenced on July 18, 2004. The three-year period, for purposes of calculating B-delays, ended on July 18, 2007. Accordingly, pursuant to 37 C.F.R. § 1.703(b), Applicant is entitled to a Patent Term Adjustment that is equivalent to the sum of the number of days in the period beginning on July 18, 2007 and ending on the date that the patent issues. Applicants note that the patent was issued on December 29, 2009. The sum of the period beginning on July 18, 2007 and ending on December 29, 2009 is 895 days.

Accordingly, 895 days of B-delay have accrued.

**Exclusions: Exclusions from 3-Year B-Delay Pursuant to 37 C.F.R. § 1.703(b)(1)**

Pursuant to 37 C.F.R. § 1.703(b)(1), B-delays, due to the USPTO's failure to issue a patent within three years of the date on which the application was filed, do not include the period consumed by continued examination of the application under 35 U.S.C. § 132(b). This period of exclusion begins on the date that a Request for Continued Examination is filed and ends on the date that the patent is issued.

In the present case, Applicant filed a Request for Continued Examination of the present application on October 1, 2008 and the patent issued on December 29, 2009. Accordingly, the period of exclusion, beginning on October 1, 2008 and ending on December 29, 2009, is 455 days.

4. In accordance with 37 C.F.R. 1.705(b)(2)(iii), Applicant submits that the above-captioned application is not subject to a terminal disclaimer.

5. In view of 37 C.F.R. 1.705(b)(2)(iv)(B), Applicant submits that they are unaware of any circumstances during the prosecution of this application, beyond the noted 168 days of Applicant's delay, that would constitute a failure by the Applicant to engage in reasonable efforts to conclude processing or examination of this application as set forth in § 1.704.

6. In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that the issued patent be adjusted to reflect a Patent Term Adjustment of 842 days.

7. In accordance with 37 C.F.R. 1.705(b)(1), Applicant submits herewith the fee set forth in 37 C.F.R. 1.18(e). It is Applicant's understanding that this \$200.00 fee is required for this application for Patent Term Adjustment. However, should any additional fees be necessary, the

Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-4876, under Order No. 117825-05101.

Dated: February 23, 2010

Respectfully submitted,

By           /Danielle L. Herritt/            
Danielle L. Herritt  
Registration No.:43,670  
McCarter & English, LLP  
265 Franklin Street, 14<sup>th</sup> Floor  
Boston, Massachusetts 02110  
(617) 449-6500  
Fax (617) 607-9200  
Attorney/Agent For Applicants